MEMORANDUM

TO: HAL HOELAND

FROM: STEVE KROFT

DATE: June 12, 1980

RE: KING KONG

I will be out of Town from June 11, 1980 to June 23, 1980. In my absence, I want you to be aware of the current status of the executory provisions of the settlement agreement so that you can handle any matters that may come up in my absence (I would suggest you check with Allen Susman before taking any action, however). The status is as follows:

1. As you know, RKO is to pay monies due under the settlement agreement by June 20, 1980. I have asked Joe DiMuro to make direct contact with Lou Petrich on or about June 13, 1980 to insure that the monies are paid and accounted for by June 20, 1980. I suggest that you touch base with Joe DiMuro next week to determine the status of the matter.

2. Hal, as you know, I have signed letters to both Paramount and Dino dated June 20, 1980 with which I will be sending copies of the joint instructions from RKO and Universal requiring Dino and Paramount to pay 62-1/2% of all future monies from Dino's King Kong picture directly to Universal. You should make sure that those letters are sent on June 20, 1980 and that copies of the letters (with enclosures) are given to my secretary for filing.

3. Sid Sheinberg has asked both me and Joe DiMuro for our opinion as to the extent of merchandising rights, if any, which Universal now owns to merchandise King Kong and, in addition, to establish a King Kong attraction at the Universal Tour. Joe and I agree that Universal has the right to put a King Kong attraction at the tour but that there may be some question as to whether it has the right to merchandise King Kong in competition with Paramount licensees if extended Paramount's merchandising rights beyond December 1, 1979. The analysis by which Joe and I reached our conclusion stated above is somewhat complicated and I will not set it forth here, but Joe DiMuro is fully familiar with this aspect of the matter.

(a) I asked both Lou Petrich and Harry Youtt (you can deal with Youtt directly on this matter (212/754-3000)) whether RKO had extended the term of Paramount's merchandising rights beyond December 1, 1979. He told me that he will get me an answer shortly, but that he is under the impression that RKO may well have extended the term of Paramount's merchandising rights.

(b) The foregoing is important because it appears that our merchandising rights are derived through Richard Cooper by way of Cooper's judgment against RKO. That judgment appears to confirm the RKO merchandising licenses with respect to the De Laurentiis' picture (including the Paramount license) since it declares RKO the constructive trustee of all monies received under those merchandising licenses. This means, apparently, that for all existing merchandising licenses our rights are simply to collect the monies received by RKO for those licenses. As to the future, (that is the period beyond which there is no conflict with licenses already existing from RKO to Paramount) Universal will have the right to further merchandise King Kong. (As to the above, Joe DiMuro is fully apprised of the analysis by which I reached the above conclusion).

(c) When word is received from Youtt concerning whether RKO has extended in writing Paramount's merchandising rights, you should obtain copies of all documents relevant to the extension and forward them immediately to Joe DiMuro, giving copies to my secretary for my review upon my return.

4. The Ninth Circuit has not yet been formally notified that this case has been settled. Andy Robertson of the Lillick office told me that he tried to advise the Clerk by

telephone that it looked like the matter would be dismissed shortly (the settlement agreement provides for dismissal after payment of the monies referred to above on June 20, 1980), but the Clerk would not take an oral notification. I understand from Robertson that Petrich is going to be preparing a letter to the Clerk advising the Clerk that a dismissal or a motion for dismissal will be coming shortly.

(a) Petrich is supposed to be preparing a motion for dismissal of the RKO appeal, with a request that the Court of Appeal remand the matter to the District Court with an Order to vacate the District Court Judgment (Hal has already done research indicating that this is the appropriate procedure).

(b) I have got authority from Gang, Tyre & Brown to file a document stating that we have no objection to the motion once it is filed and hopefully therefore it will be granted. Any document which we file in that regard, however, should be sent to Gang, Tyre & Brown before filing. It should be done immediately after the filing by Petrich of his motion.

(c) In connection with that appeal, Richard Cooper is also appealing from the Universal judgment in the federal case. I don't think that Richard Simon (of the Kadison firm), Cooper's attorney, will have any objection to the Universal judgment being vacated, but you should be in touch with Lee Blackman to determine how procedurally they are going to handle that aspect of the appeal.

(d) As to the Cooper judgment, RKO is to deliver to us a written notice of abandonment or request for dismissal of its appeal from the Cooper judgment. Since the Cooper judgment is not moot, a dismissal with directions to vacate that judgment in the District Court is not appropriate. For, RKO still owes Cooper some money that Universal has no claim or right to. However, it is <u>essential</u> <u>that</u>

the Cooper judgment not be vacated because it is the document from which Universal derives all of its rights in King Kong.

(e) Cooper also has a cross-appeal pending seeking a declaration that he -- not RKO -- owns the renewal copyright in RKO's King Kong motion picture. It is up to Cooper to decide whether he wants to pursue that appeal or not. Under no circumstances should we ask or instruct Cooper to dismiss or drop that appeal. It will require us to pay Cooper a substantial sum of money if we do so. I repeat, do not request or even suggest to Cooper that he drop that cross-appeal. That is solely up to him. To make the matter clear, that cross-appeal is a cross-appeal by Cooper against RKO with respect to the judgment on the Cooper cross-claim. The cross-appeal has nothing at all to do with the Universal judgment in the federal action.

SAK:jw

cc: Allen E. Susman

DICTATED BUT NOT READ